

REMARKS

Claims 1 - 7 remain active in this application. The specification and Abstract have been editorially revised in response to criticisms by the Examiner. No new matter has been introduced into the application.

The Examiner has objected to the Abstract as being of more than 150 words. This objection is respectfully traversed as being moot in view of the proposed amendment to the Abstract provided above which reduces the length of the Abstract to 139 words. The above-proposed amendment to the Abstract deletes language which may be considered as possibly redundant and self-referential to an extent which is believed to be maximal without compromising the understanding of the invention which may be derived therefrom.

Nevertheless, it is respectfully pointed out, as will be discussed in greater detail below, that the deleted language, while self-referential and possibly redundant, served to emphasize the manner in which the meritorious effects of the invention and any reinstatement by the Examiner of language deleted by the above amendment will be favorably considered and is encouraged.

The Examiner has also objected to the language of page 11, line 9. This objection is also respectfully traversed as moot in view of the above-proposed amendment. While the Examiner's suggestions are appreciated, the above-proposed amendment is believed to be less awkward and more accurately reflective of the scope and nature of the invention. Should the Examiner have any objection to the above-proposed amendment, either of the Examiner's suggestions are also acceptable to Applicant and an Examiner's Amendment to substitute either suggestion by the Examiner for the above-proposed amendment is hereby authorized.

Claims 1 - 3 and claim 6 have been separately rejected under 35 U.S.C. §103 as being unpatentable over Oakley in view of official notice. Claims 4 - 5 and 7 have also be separately rejected under 35 U.S.C. §103 as being unpatentable over Oakley in view of Fritsch and official notice. It is not particularly clear why these separate rejections have been made based on the same prior art. Nevertheless, these grounds of rejection are respectfully traversed for the reasons of record and the further remarks provided below.

It is again respectfully pointed out that the Examiner's reliance upon official notice and inherency in the respective statements of the various grounds of rejection is improper. The Examiner has cited numerous documents to support the proposition that it is well-known to connect to web sites and connected servers through other servers. However, the Examiner does not apply any of these references in combination with Oakley (or Fritsch) to answer particular recitations of the claims. Official notice is only proper when a fact is so notoriously well-known that separate evidence thereof should not be required. Similarly an assertion of inherency is proper only when a fact, not explicitly disclosed in an applied reference, must necessarily and logically follow from subject matter which is, in fact, disclosed in that reference. In the present case, the facts at issue are the explicit recitations of the claims and if any of the references relied upon to support the Examiner's assertion of official notice explicitly disclosed the claimed subject matter or provided evidence of a level of ordinary skill in the art to support a conclusion of obviousness in a proper combination (e.g. with proper motivation demonstrable from the disclosure of the references) with the prior art actually applied, the issue of the propriety of the official notice taken could have been rendered moot by

simply including such a reference in the statement of the corresponding ground of rejection. However, the Examiner has not done so and continues to assert official notice in a manner which does not directly address the explicit recitations of the claims. Likewise, the Examiner's assertion of inherency are based on general descriptions of functions for which structure the Examiner asserts to be inherent is not, in fact, necessary. That is, even if the Examiner's assertions of official notice and inherency were otherwise proper, they still do not directly respond to or answer the explicit recitations of the claims, as would be clear from the Examiner's direct inclusion in the stated grounds of rejection of any of the references cited in support of the propriety of the official notice taken. Therefore, it is again respectfully submitted that the Examiner's reliance on official notice and inherency are not only improper and do not support a *prima facie* demonstration of obviousness of any claim in the application but, rather, are indicative that impermissible hindsight has been employed and/or explicit recitations of the claims have been ignored in the Examiner's analysis of the claimed subject matter.

This logical defect in the Examiner's rationale is particularly evident when it is understood that the primary objective of the invention is to reduce the time required for use of a download terminal in a shop or other business establishment to search for data to be downloaded and to download the data searched out in such a way (as well as to settle the transaction). The invention solves this problem by off-loading the search portion of the transaction to a search server separate from but connected to a data distribution server to which a download terminal is also connected. This is achieved by the provision of a search terminal to which a personal terminal is connectable for not only

conducting a search, but registering a searched out title in connection with identification information. The title can then be accessed from the download server based on the identification information and the download terminal usage time is reduced to entry of the identification information and downloading of the distribution data which has already been selected while the time on the download terminal for searching and ordering is completely avoided. To further reduce the burden on the download terminal, if the transaction can be settled through the search server connection with the personal terminal, downloading of the distribution data can be performed through the search server directly to the personal terminal.

While the various references cited may vary well teach or suggest that various network configurations, the connection of a personal terminal and/or the addition of levels of servers may be within the level of ordinary skill in the art, it is the particular routing of communications which is actually at issue and which the generalized capability of different network configurations, use of a personal terminal and/or additional servers does not respond. Specifically, claim 1 recites:

"said search server including (1) a database for storing a plurality of titles of distribution information, (2) title search means for searching the titles stored in said database for a title designated for subscription from said personal terminal, and (3) subscription information storage means *for storing the title searched out by said title search means and identification information transmitted from said personal terminal*"

and

"said download terminal including

(1) *identification information acquisition means for acquiring identification information inputted from the outside*, (2) *first readout means for reading out, based on the identification information acquired by said identification information acquisition means, the title stored in said subscription information storage means of said search server which corresponds to the identification information*, (3) *second readout means for reading out the distribution information corresponding to the title read out by said first readout means from said distribution information storage means of said data distribution server, and recording means for recording the distribution information read out by said second readout means onto a recording medium*" (numeric identification and emphasis added). Similarly, claim 4 recites:

"said search server including (1) a database for storing a plurality of titles of distribution information, (2) title search means for searching the titles stored in said database for a title designated for subscription from said personal terminal, and (3) *subscription information storage means for storing the title searched out by said title search means*"

and

"said data distribution server including (1) distribution information storage means for storing the distribution information, (2) title acquisition means *for acquiring the title stored in said subscription information storage means of said search server*, (3) distribution information readout means for

reading out the distribution information *corresponding to the title acquired by said title acquisition means* from said distribution information storage means, and (4) transmission means for transmitting the distribution information read out by said distribution information readout means to said personal terminal" (numeric identification and emphasis added).

Likewise, claim 6 recites:

"said search server including (1) a database for storing a plurality of titles of distribution information, (2) title search means for searching the titles stored in said database for a title designated for subscription from said personal terminal, and (3) *subscription information storage means for storing the title searched out by said title search means*"

and

"said data distribution server including (1) distribution information storage means for storing the distribution information, (2) title acquisition means *for acquiring the title stored in said subscription information storage means of said search server*, (3) distribution information readout means for reading out the distribution information *corresponding to the title acquired by said title acquisition means* from said distribution information storage means, and (4) transmission means for transmitting the distribution information read out by said distribution information readout means to said personal terminal" (numeric identification and emphasis added).

Further, in a generally similar manner, claim 7

recites:

the steps performed by said search server of (1) *storing* a plurality of titles of distribution information *into a database of said search server*, (2) searching the titles *stored in said database* for a title *designated for subscription from said personal terminal*, and (3) *transmitting* the searched out title to *said data distribution server*"

and

"the steps performed by said data distribution server of (1) storing the distribution information into distribution information storage means, (2) reading out the distribution information *corresponding to the title transmitted from said search server* from said distribution information storage means, and (3) *transmitting* the read out distribution information to *said personal terminal*" (numeric identification and emphasis added).

Thus, the claims explicitly recite not only the constitution and configuration of a network sufficient to support the meritorious effects of the invention in reducing transaction time on the download terminal but also specifically and explicitly recite the communications and routing thereof which achieve the meritorious result of off-loading time-consuming portions of the transaction to an additional search server and a connectable personal terminal as well as reducing transaction time by calling up the title already selected based on identification information (only) input to the download terminal or, in the case of claim 7, removing transactions from the download terminal altogether. (While the configuration of claim 7 essentially substitutes the search server for the

download terminal, it serves to reduce the title search burden on the data distribution server which would otherwise be imposed through the downloading server and completely bypasses the downloading server for the transaction.)

Oakley and Fritsch certainly do not teach or suggest these explicitly claimed features of the present invention or provide evidence of a level of ordinary skill in the art which would support a conclusion of obviousness by leading to an expectation of success in achieving the meritorious effects of the invention in the manner claimed, as previously pointed out. On the contrary, there is no appearance that Oakley and/or Fritsch even recognize the problem addressed by the invention much less providing the solution claimed. Further, while the documents which the Examiner asserts to support the propriety of taking official notice may (*arguendo*) teach the subject matter asserted by the Examiner, the Examiner does not even assert that they teach or suggest the particular communications or routing which is explicitly recited which directly supports the meritorious effects of the invention. Therefore, the Examiner continues to fail to make a *prima facie* demonstration of the obviousness of any claim and the official notice and assertions of inherency made in the statements of the various grounds of rejection are clearly seen to be exercises in impermissible hindsight and/or to result from ignoring explicit recitations of the claims. These errors in the Examiner's analysis are particularly clear from the Examiner's assertions at page 14, last paragraph, (evidently in response to argument bridging pages 6 and 7 of the previous response) wherein the "Examiner replies that Oakley does not disclose that these functions [downloading and recording] are performed at second readout means distinct from the first readout means, *but there is no explicit requirement that the*

second readout means and the first readout means are not the same readout. (Even if there were, Examiner considers it unlikely that this could be a basis for patentability.)" Thus, in essence, the Examiner appears to be ignoring the communication path between the personal terminal via the search server for supplying information regarding a subscribed title being accessed in response to identification information acquired through the download terminal, as claimed and asserting, without any reliance on any identified evidence, that this explicitly recited feature of the invention which supports its meritorious effects would be a basis for patentability. It is respectfully pointed out that such a position also indicates a substantial lack of understanding of the invention as well as an improper construction of the explicitly claimed subject matter as well as demonstrating an improper analysis of the claims and being an unsupported assertion of unpatentability.

Accordingly, it is respectfully submitted that the error in the asserted grounds of rejection are abundantly clear, as is the Examiner's continued failure to *prima facie* demonstrate the obviousness of any claim. Therefore, it is respectfully submitted that the asserted grounds of rejection are untenable and reconsideration and withdrawal thereof is respectfully requested.

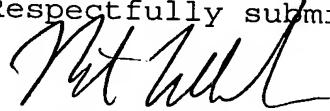
It is also respectfully submitted that the finality of the present action is premature. It is axiomatic that an action should not be made final when a *prima facie* demonstration of the propriety of rejections contained therein has not been made therein, particularly where the rejections are repeated from a prior action in which a *prima facie* demonstration of the propriety thereof was similarly not made. While it is believed that the entry of the amendments requested above is in order since the amendments are completely

non-substantive and respond directly to matters of form raised by the Examiner, it is respectfully requested that the finality of the present action be withdrawn and the amendments entered as a matter of right as well as requiring any further adverse action to be non-final.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,,



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Clean copy of the Abstract:

Abstract of the Disclosure

An online distribution system by which the time required for a downloading procedure in a shop can be performed in a short time by a download terminal connected to a search server through a data distribution server which is connectable to a personal terminal. The search server stores a plurality of titles of distribution information, searches the titles for a title designated for subscription from the personal terminal, and stores the searched out title and identification information transmitted from the personal terminal. The download terminal acquires identification information inputted from the outside, reads out, based on the acquired identification information, the title which corresponds to the identification information from the search server, reads out the distribution information corresponding to the read out title from the data distribution server, and records the read out distribution information onto a recording medium.